

## **STATUTORY CRIMINAL 4.03**

### **JUSTIFICATION; USE OF PHYSICAL FORCE**

A defendant is justified in using physical force as follows:

[A parent/ guardian/ teacher/ person entrusted with the care or supervision of a minor or incompetent person may use reasonable and appropriate physical force upon such minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline.]

[A superintendent/ entrusted official of a jail/ prison/ correctional institution may use physical force for the preservation of peace, to maintain order or discipline, or to prevent the commission of any felony or misdemeanor.]

[A person responsible for the maintenance of order in a place where others are assembled/ on a common carrier of passengers may use physical force if and to the extent that a reasonable person in a similar situation would believe it necessary to maintain order. Such person may use deadly physical force only if reasonably necessary to prevent death or serious physical injury. This defense is also available to a person acting under the direction of the responsible person. A defendant may use deadly physical force only to protect against another's use or apparent, attempted or threatened use of deadly physical force.]

[A person acting under the belief of a reasonable person in a similar situation that another person is about to commit suicide or to inflict serious physical injury upon himself/ herself may use physical force upon such other person to the extent reasonably necessary to thwart the result.]

[A duly licensed physician/ registered nurse/ person acting under the direction of a duly licensed physician/ person acting under the direction of a registered nurse/ person who renders emergency care at the scene of an emergency occurrence may use reasonable physical force for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the patient only if the following condition exists/ conditions exist:

1. The treatment is administered with the consent of the patient/ if the patient is a minor or an incompetent person, with the consent of the parent, guardian or other person entrusted with the care and supervision of the minor or incompetent person; *or*
2. The treatment is administered in an emergency when a reasonable person in a similar situation administering such treatment believes that no one competent to consent can be consulted and that a reasonable person in a similar situation as a patient, wishing to safeguard his/ her welfare, would consent.]

The use or threat of [physical force] [deadly physical force] is justified only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of [physical force] [deadly physical force] is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force or deadly physical force.

[You must measure the defendant's belief against what a reasonable person in the situation would have believed.]

If evidence was presented that raises the defense of justified use of physical force for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

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**SOURCE:** A.R.S. § 13-403 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

**USE NOTE:** Use the language in brackets and slashes as appropriate to the facts.

The bracketed portion regarding the measuring of the defendant's belief against that of a reasonable person must be included in those situations where a reasonable person standard is required. *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

"Physical Force" and "Deadly Physical Force" are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.05(12) & (28)).

In regard to the bracketed portion pertaining to jail/prison officials, the following instruction should be given if the facts are appropriate: "Actual danger is not necessary to justify the use of [physical force for the preservation of peace, to maintain order or discipline, or to prevent the commission of any felony or misdemeanor] [deadly physical force to prevent death or serious physical injury]. Mere words may be sufficient to justify the use of physical force." See *State v. Bojorquez*, 138 Ariz. 495, 498-99, 675 P.2d 1314, 1317-18 (1984) (holding that these instructions could be appropriate if the facts warranted them).

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on "affirmative defense" so as to inform the jury on the correct burden of proof. "Affirmative defense" is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative defense must be shown by a preponderance of the evidence. "Preponderance of the evidence" is defined in Standard Instruction 5b(2).

**COMMENT:** The Arizona Supreme Court has required that an instruction under A.R.S. §§ 13-404 & -405 must include a reference to the reasonable person standard. *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995). Because A.R.S. § 13-403 requires a reasonable person standard in some of the bracketed paragraphs above, the direction given in *Grannis* will likely apply in those situations. The Supreme Court in an old case held that a priest has no justification in using physical force on a child not entrusted to his care, even though the parent of the child had specifically given the priest permission and instructions to punish the child. *Donnelly v. Territory*, 5 Ariz. 291, 295, 52 P. 368, 370 (1898).